

ARKANSAS SUPREME COURT

No. CR 93-189

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered October 12, 2006

REGINALD EARLY
Petitioner

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR *CORAM NOBIS*
[CIRCUIT COURT OF DALLAS
COUNTY, CR 90-16]

v.

STATE OF ARKANSAS
Respondent

PETITION DENIED

PER CURIAM

In 1992, a jury found petitioner Reginald Early guilty of aggravated robbery and murder in the first degree and sentenced him to life imprisonment in the Arkansas Department of Correction. This court affirmed the judgment. *Early v. State*, 315 Ark. 466, 869 S.W.2d 9 (1994). Petitioner filed in the trial court a petition for postconviction relief under Ark. R. Crim. P. 37.1, which was not timely. Following the trial court's denial of that petition, this court denied petitioner's request to proceed with an appeal because the petition was untimely. *Early v. State*, CR 99-1113 (Ark. November 18, 1999) (*per curiam*). In 2004, petitioner filed a *pro se* petition in this court to reinvest jurisdiction in the trial court to consider a petition for writ of error *coram nobis*, which was denied. *Early v. State*, CR 93-189 (Ark. November 18, 2004) (*per curiam*).

Once again, petitioner, proceeding *pro se*, requests this court to reinvest jurisdiction in the

trial court to consider a petition for writ of error *coram nobis*.¹ The petition for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error *coram nobis* after a judgment has been affirmed on appeal only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (*per curiam*). In this latest petition, petitioner asserts that the trial court should be reinvested with jurisdiction to consider a petition for the writ because the prosecution withheld a written statement and a videotape containing a confession by a co-defendant, and that the statement and videotape were exculpatory because they could have been used to impeach the co-defendant's statements at the co-defendant's plea hearing.

Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984), citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975). A writ of error *coram nobis* is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). We have held that a writ of error *coram nobis* was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (*per curiam*). The function of the writ is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). For the writ to issue following the affirmance of a

¹For clerical purposes, the instant petition to reinvest jurisdiction in the trial court to consider a petition for writ of error *coram nobis* was assigned the same docket number as the direct appeal of the judgment.

conviction, the petitioner must show a fundamental error of fact extrinsic to the record.

Petitioner alleges that evidence was withheld by the prosecution. However, the court is not required to accept at face value the allegations of the petition. *Penn*, 282 Ark. at 574, 670 S.W.2d at 428. Petitioner has made only conclusory allegations with no showing of any facts supporting his contention that the State did, in fact, withhold any evidence, or that the evidence claimed withheld would be exculpatory. Moreover, the allegations made raise only issues that are not appropriate for *coram nobis* relief.

Trial counsel made a number of motions for discovery, including one after petitioner's co-defendant entered his guilty plea that requested any statements made by any co-defendants. The transcript of the co-defendant's plea hearing that petitioner references was introduced at his trial for impeachment purposes when the co-defendant testified that he did not know petitioner or participate in the crime. This transcript was apparently also introduced during a previous trial that resulted in a mistrial. Counsel was clearly aware of the existence of the statements, and petitioner has provided no facts that would support a showing that they were indeed withheld by the prosecution. Nor has he made any showing as to what was contained in the purportedly withheld statements that would have further supported his co-defendant's testimony. Petitioner only maintains that the statements could have been used to attack his co-defendant's plea statement, without further explanation. Conclusory statements cannot be the basis of postconviction relief. *Jackson v. State*, 352 Ark. 359, 105 S.W.3d 352 (2003).

A writ of error *coram nobis* is appropriate only when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown and would have prevented the rendition of the judgment had it been known to the trial court. *Echols v. State*, 360 Ark. 332, ____

S.W.3d ___ (2005); *Brown v. State*, 330 Ark. 627, 955 S.W.2d 901 (1997). Petitioner has shown no fundamental error of fact extrinsic to the record, and whatever issues there may have been concerning the statements and video could have been addressed at trial. Because he has stated no grounds upon which the writ could issue, we decline to reinvest the trial court with jurisdiction to consider the petition for writ of error *coram nobis*.

Petition denied.